AMMA AUSTRALIAN RESOURCES & ENERGY GROUP

MEDIA RELEASE

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Grossly unfair 'Mondelez' decision must be overturned by the High Court

Resources and energy industry employers strongly support an appeal to the High Court of Australia challenging an astonishing decision which overturned the longstanding practice for calculating personal leave and which would lead to significant inequities for different groups of employees.

The controversial Federal Court decision in *Mondelez v AMWU* found the National Employment Standards required all employees to be provided with enough personal leave to allow them to take 10 days of personal/carer's leave per year, irrespective of how many hours they work each day.

This decision overturned the widely accepted practice of taking "10 days" to mean 10 x 7.6 hour working days, or 76 hours in total, which would apply to all employees regardless of the shifts or rosters worked.

In effect, this decision would provide employees working long shifts and/or industry-specific rosters with far greater leave entitlements than those who work a standard 38-hour week. This would have far-reaching implications for real-world employment practices across the broader economy.

By way of example, consider an employee working a roster of 4 x 12 hour working days, followed by four non-working days (4 days on, 4 days off).

- The longstanding accepted practice would be to provide this employee with 76 hours of personal/carers leave, calculated as 10 x 7.6 hour days. This would be the same entitlement provided to an employee working a standard 38 hour working week (5 days on, 2 days off).

- Under the Federal Court's interpretation in *Mondelez*, the employee working the 4/4 roster would be provided with 120 hours of personal / carers leave (10 x 12 hour days). This would provide them with 158% of the entitlement afforded to the employee working the 5/2 roster, despite the total hours worked each year averaging out to be roughly the same.

"Australia Resources and Energy Group AMMA supports Mondelez exercising its right of appeal on a decision that is inconsistent with not only current and longstanding industry practice, but also Parliament's intended purpose of the provisions and previous case law," Steve Knott, Chief Executive of AMMA, said.

"The decision wildly deviates from current and widespread leave accrual practices, creating uncertainty, confusion and concern for employers and employees. The astonishing interpretation of two of the three Judges in this case would impact many employers across almost every industry.

"Not only does the decision create avoidable uncertainty for both employers and employees, it will expose businesses to an unprecedented level of financial risk."

The strong dissenting judgement by Justice O'Callaghan in favour of the employer's position found the "position advanced by the union produces an outcome that creates inequities between different classes of employees that Parliament did not intend".

AMMA is strongly urging the Australian Government Attorney General and Minister for Industrial Relations, who was party to the original decision, to intervene in the High Court appeal.

"This decision is grossly unfair to employees working a standard 38-hour week. The inequities it creates will be damaging to workplace culture and harmony - clearly this is not what Parliament intended when drafting the Act," Mr Knott said.

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